



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 21, 1993

Mr. Kenneth Ramirez
Deputy Executive Director
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR93-474

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19984.

The Texas Water Commission (the "commission") received an open records request for certain records pertaining to "Ecology Technology, Inc. and Eltex Chemical Supply Company." In your request for an open records decision, you admit that the commission failed to request a decision from this office within ten days of the commission's receipt of the open records request.

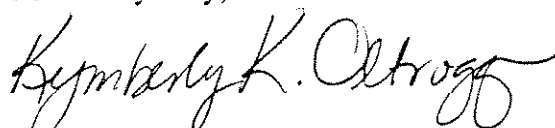
Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 319 (1982) at 1-2 (quoting Open Records Decision No. 71 (1975)); *see City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 324 (Tex. App.--Houston [1st Dist.] 1984, no writ). The governmental body must show a compelling interest to withhold the information. *See Hancock*, 797 S.W.2d at 381; Open Records Decision No. 319 at 1-2 (quoting Open Record Decison No. 71 (1975)).

Citing Open Records Decision No. 586 (1991)¹ as authority, you contend that compelling reasons exist for the commission to withhold the requested information because the information relates to a United States Environmental Protection Agency ("EPA") investigation. You further inform us that the EPA "has strongly requested that the [commission] withhold the information in these files." In Open Records Decision No. 586, this office held that if the release of information would compromise the interests of a governmental body other than the one that failed to request an open records decision in a timely manner, such interests may constitute a compelling reason for withholding the information. In that instance, a district attorney had failed to request an open records decision from this office in a timely manner, but the Texas Department of Public Safety ("DPS") subsequently demonstrated to this office that the release of those records would undermine one of its ongoing criminal investigations. The opinion concluded that "the policy underlying the legislative incentive found in section 7(a) of the Open Records Act would not be furthered by requiring the release of information that would jeopardize an investigation of" the DPS.

Although you assert that the EPA has requested that the commission not release the requested records, neither you nor the EPA has demonstrated to this office how the release of the records would jeopardize the EPA's interest in keeping this information confidential, despite the fact that this office specifically requested such documentation in our May 20, 1993, letter to your office. Absent such documentation, we find that you have not met your burden of demonstrating compelling reasons why the commission should withhold the records at issue. Accordingly, the commission must release these records.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/jmn

Ref: ID# 19984

¹Although you actually cite in your brief to this office Open Records Decision No. 511 (1988), it is apparent to this office that you intended to cite Open Records Decision No. 586. Open Records Decision No. 511 concluded that governmental bodies may not unilaterally decide to withhold information from the public pursuant to section 3(a)(3) of the act without requesting a decision from this office.

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Enclosures: Submitted documents

cc: Mr. George O. Wilkinson, Jr.
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(w/o enclosures)